

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E-2

FILE:

Office: PHILADELPHIA, PA

Date:

JUL 22 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the Interim District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Vietnam on April 20, 1985. The applicant's natural father, [REDACTED] was born in Vietnam and has no claim to U.S. citizenship. The applicant's mother was born in Vietnam and also has no claim to U.S. citizenship. The record reflects that the applicant's natural parents divorced in Vietnam in August 1991. The applicant's mother later remarried the applicant's stepfather, [REDACTED] in Vietnam on November 14, 1997. The applicant's stepfather became a naturalized-U.S. citizen on April 15, 1998, and the applicant was admitted into the United States as a lawful permanent resident on August 4, 2002, pursuant to an immigrant petition filed by his stepfather. Presently, the applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on his relationship to his U.S. citizen stepfather.

The interim district director (IDD) found the applicant had failed to establish he was legally adopted by his stepfather. The IDD therefore found that the applicant was not entitled to citizenship under section 320 of the Act. The IDD additionally found that the applicant did not meet the requirements for citizenship under section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432, or section 301 of the Act, 8 U.S.C. § 1401. The application was denied accordingly.

On appeal, the applicant asserts that the marriage between his mother and stepfather constituted an adoption in Vietnam based on Vietnamese cultural traditions. The applicant indicates further that Citizenship and Immigration Services (CIS) recognized him as the child of his stepfather for immigrant visa purposes, and that he should therefore also be recognized as his stepfather's child, for section 320 of the Act certificate of citizenship purposes.¹

Section 320 of the Act states, in pertinent part:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1)(E) of the Act states in pertinent part that:

¹ The AAO notes that neither section 321 of the former Act nor section 301 of the present Act applies to the applicant's situation. The AAO notes further that the applicant's appeal does not contest the IDD's determination that he is not eligible for citizenship under sections 321 and 301 of the former and present Acts. The AAO will thus not address the applicant's eligibility for citizenship under either section of the Act.

(1) The term "child" means an unmarried person under twenty-one years of age who is-

...

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.²

The AAO notes that for citizenship purposes under section 320 of the Act, a U.S. citizen parent cannot obtain citizenship for a stepchild unless the parent legally adopts the child and presents, among other things, proof of such adoption prior to the child's 16th birthday.³

The AAO finds the applicant's assertion that the marriage of her parents in itself constituted a legal adoption in Vietnam is unsupported by any evidence in the record, and the AAO finds that the applicant has failed to establish that he was legally adopted by his U.S. citizen stepfather or that he otherwise meets the definition of "child" as required by section 320 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

² Section 101(c) of the Act states that:

(c) As used in title III-

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child . . . except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such . . . adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the . . . adopting parent or parents at the time of such . . . adoption.

³ The AAO notes that , unlike the citizenship provisions contained in the Act, section 101(b)(1)(B) of the Act allows an un-adopted stepchild to qualify as a "child" for nonimmigrant and immigrant visa purposes.